

Pre-Disciplinary Hearing



NOV 5 - 2002
FRATERNAL ORDER OF POLICE
GREEN CITY LODGE #82

Police Officer Victor Spellen

Internal Investigations Section

Case # 00248

Hearing Officer:

Captain Andrew G. Raabe

Hearing Coordinator:

Sergeant Maris Herold, Sergeant Anthony Carter, Internal
Investigations Section

Exh. 27
FOR COPY

**POLICE OFFICER VICTOR SPELLEN
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ATTACHMENT (OMI INVESTIGATION)



City of Cincinnati
Police Department

Colonel Thomas H. Streicher, Jr.

11-07-02

SIR: The following charge(s) are preferred

AGAINST: Police Officer Victor Spellen
ASSIGNED TO: Telephone Crime Reporting Unit

CHARGE(S): Neglect of Duty and Dishonesty

SPECIFICATION(S): Violation of Rules 2.12 and 5.01 of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Division.

SPECIFICATION I:

Members of the Homicide Unit interviewed Officer Spellen (P862) on two separate occasions. During the interviews Officer Spellen demonstrated a "neck hold" that Officer Jorg demonstrated to Sergeant Watts. When Officer Spellen was summoned to testify to what he observed at 2098 Seymour Avenue on November 7, 2000, he demonstrated a different hold. Officer Spellen admitted he intentionally altered this hold in court to favor Officer Jorg.

Officer Spellen's actions are in violation of Rule 5.01 of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Division.

Rule 5.01 No member shall knowingly state, enter, or cause to be entered on any official document, any inaccurate, false, incomplete, misleading, or improper information.

Specification II (OMI)

The allegation that on November 7, 2000, Officer Spellen observed a medical injury to Mr. Owensby and rendered no appropriate first aid immediately once the incident scene is stabilized is sustained. Officer Spellen's action violated CPD Procedure Manual Section 12.545, Use of Force, and the Manual of Rules and Regulations and Disciplinary Process, Section Two, 2.12.

Rule 2.12 Members are responsible for insuring the safety and welfare of persons and their personal property when transporting or having custody of persons who are sick, injured, arrested, or incapacitated in any way.

City of Cincinnati
Police Department

Colonel Thomas H. Streicher, Jr.

11-01-02

SIR: The following charge(s) are preferred

AGAINST: Police Officer Victor Spellen
ASSIGNED TO: Telephone Crime Reporting Unit

CHARGE(S): ~~Failure of~~ Neglect of Duty and Dishonesty

SPECIFICATION(S): Violation of Rules 2.12 and 5.01 of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Division.

SPECIFICATION I:

Members of the Homicide Unit interviewed Officer Spellen (P862) on two separate occasions. During the interviews Officer Spellen demonstrated a "neck hold" that Officer Jorg demonstrated to Sergeant Watts. When Officer Spellen was summoned to testify to what he observed at 2098 Seymour Avenue on November 7, 2000, he demonstrated a different hold. Officer Spellen admitted he intentionally altered this hold in court to favor Officer Jorg.

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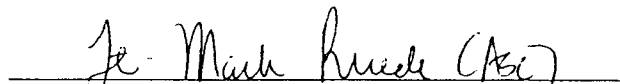
Rule 2.12 Members are responsible for insuring the safety and welfare of persons and their personal property when transporting or having custody of persons who are sick, injured, arrested, or incapacitated in any way.

Procedure 12.545

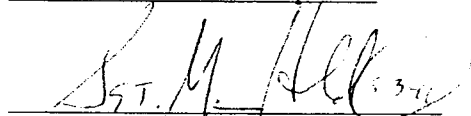
Following any use of force resulting in a citizen's injury, officers will ensure appropriate first aid is rendered immediately once the incident scene is stabilized.


A Pre-Disciplinary Hearing will be convened before Captain Andrew G. Raabe, Department Hearing Officer, on November 8, 2002, at 1000 hours at the Internal Investigations Section Conference Room, 801B West Eighth Street, Suite 502.

You should notify any witnesses to appear in your behalf. You are entitled to be represented by legal counsel, or in lieu thereof, you are encouraged to select a member of the Department to accompany you and represent you as outlined in Rule 9.14 of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Department.

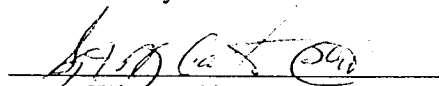

Internal Investigations Section Commander

Sergeant Maris Herold served the forgoing notice of charge(s) on Police Officer Victor Spellen on November 1, 2002.


Serving Officer Signature


Employee Signature

Witnessed by:


Witness Signature

Sgt. Anthony B. Carter Sgt.
Printed Name and Rank

SIR: The above charge(s) are prejudicial to the good order and discipline of the police service and are respectfully referred to you for disposition. A copy hereof has been delivered to the accused.

Police Chief

City of Cincinnati



Interdepartmental
Correspondence Sheet

Date 12/10/02

To Colonel Thomas H. Streicher, Jr., Police Chief
From Captain Andrew G. Raabe, District Three Commander
Copies to
Subject **Pre-Disciplinary Hearing – Police Officer Victor Spellen**

COPY

On Tuesday November 19, 2002, at 1330 hours, Captain Andrew G. Raabe conducted a pre-disciplinary hearing on the charges of Dishonesty and Neglect of Duty placed by the Internal Investigations Section and Office of Municipal Investigations against Police Officer Victor Spellen of Telephone Crime Reporting Unit. Officer Spellen is charged with violations of sections 5.01, and 2.12 of the manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Department.

REPRESENTATION:

Mr. Donald Hardin and Specialist Scotty Johnson of Fraternal Order of Police Lodge #69, and Sentinel Police Association represented Officer Spellen at the hearing. Also present were Sergeants Maris Herold and Anthony Carter of Internal Investigations Unit, and Mr. John Plahovinsk from the Office of Municipal Investigations.

SPECIFICATION I:

Members of the Homicide Unit interviewed Officer Spellen (P862) on two separate occasions. During the interviews Officer Spellen demonstrated a "neck hold" that he saw Officer Jorg demonstrate to Sergeant Watts. When Officer Spellen was summoned to testify, in Officer Jorg's criminal trial, to what he observed at 2098 Seymour Avenue on November 7, 2000, he demonstrated a different hold. Officer Spellen admitted he intentionally altered this demonstrated hold in court to favor Officer Jorg.

Officer Spellen's actions are in violation of section 5.01 of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Division.

5.01 No member shall knowingly state, enter, or cause to be entered on any official document, any inaccurate, false, incomplete, misleading, or improper information.

Specification II

On November 7, 2000, Officer Spellen observed an injury to Mr. Owensby and rendered no appropriate first aid immediately once the incident scene was stabilized. Officer Spellen's action violated Procedure 12.545 Use of Force and section 2.12 of the Manual of Rules and Regulations and Disciplinary Process.

2.12 Members are responsible for insuring the safety and welfare of persons and their personal property when transporting or having custody of persons who are sick, injured, arrested, or incapacitated in any way.

Procedure 12.545 Use of Force

Following any use of force resulting in a citizen's injury, officers will ensure appropriate first aid is rendered immediately once the incident scene is stabilized.

The following is a summary of information presented in support of Specification I:

- The transcript of Officer Spellen's IIS interview was submitted as evidence. Officer Spellen admitted, during his last interview with IIS, that he lied during his court testimony by altering his demonstration of the neck hold he had seen Officer Jorg demonstrate to Sergeant Watts on the night of the incident. IIS interviews confirm that Officer Spellen admitted to lying for the purpose of making the hold look less threatening.

The following is a summary of information submitted as rebuttal by Mr. Hardin in reference to Specification I:

- Mr. Hardin presented that Officer Spellen did admit to IIS during his interview that he lied in court when he demonstrated a different hold than what he had previously testified to during his CIS interview and during his Grand Jury testimony. Mr. Hardin also does not dispute the fact that Officer Spellen admitted to demonstrating the hold he saw Officer Jorg demonstrate differently so that it would appear less threatening. However, Mr. Hardin stated that this occurred because sometime between the time that Officer Spellen testified to the Grand Jury, and the time he testified at the trial, he knew that his statement about the neck hold was incorrect. The officer had begun to doubt what he saw and heard on that night. Unfortunately, rather than advising the prosecutor or just coming out and saying that in court, Officer Spellen instead demonstrated a different hold that he felt more closely resembled what he thought he had observed.
- Mr. Harden offered that in actuality Officer Spellen did not know if he was demonstrating something different or not because he was really unsure of what he observed that night. Mr. Hardin added that Officer Spellen should have just admitted that from the beginning, but he did not. Mr. Hardin also offered that Officer Spellen answered IIS' questions truthfully and that he fully admitted what he had done. However, Mr. Hardin feels that this was more a

case of a young officer who was confused and unsure of what occurred or what he observed than a case of willful lying or cover-up.

The following mitigation was offered by Specialist Johnson in reference to Specification I:

- Specialist Johnson stated that he wished it to be taken into account, the atmosphere within the Police Department two years ago when this occurred. There were fund raisers to try to help these officers out and the District Commander threatened to put up tally sheets to track which officers gave money to support the defense of the officers involved in this incident. Specialist Johnson felt this caused a lot of stress on a young officer such as Officer Spellen to do whatever he could to help out. Specialist Johnson felt that any contradictory testimony in this case was contributed to by the atmosphere created within the Police Department and, while Officer Spellen may have been caught up in this, he did not intentionally attempt to be dishonest.

Conclusion Specification I:

Information presented during the hearing and courtroom transcripts and statements submitted as part of the overall investigation, support Specification I.

Finding Specification I:

There is a finding of sustained for Specification I.

The following is a summary of information presented in support of Specification II:

- Officer Spellen can be heard, on the videotape from the MVR in Officer Spellen's police car for November 7, 2000, telling Officer Brazile (after they looked into the window of the Golf Manor police car), "It looks like he is hurting a little bit." Officer Brazile replied, "A lot of bit." This indicates Officer Spellen knew Mr. Owensby was injured.
- Officer Spellen's told CIS that he heard Officer Jorg tell Sergeant Watts that Officer Jorg got the blood on his sleeve from the suspect when they tackled him to the ground. Officer Spellen told CIS that when he looked into the Golf Manor police car, he saw Mr. Owensby slumped over in the seat, not saying anything and not moving.
- After Officers Spellen and Brazil looked into the Golf Manor police car and made their comments, they both went back to their cars and left the scene. These actions by the officers indicate the scene was stable and there was opportunity to call for or render medical aid to Mr. Owensby prior to the supervisors making the discovery.

- Officer Spellens told IIS the reason he went back to his car and left the scene was so he could be available for radio runs. This is evidence that the scene was stable enough for officers to have the opportunity to check on Mr. Owensby and Officer Spellens priority should have been Mr. Owensby.

The following is a summary of information presented as rebuttal by Mr. Hardin to Specification II:

- Mr. Hardin stated that Officer Spellens never was shown to have transported or taken custody of Mr. Owensby during this entire incident. Mr. Hardin offered that the investigation does not show that Officer Spellens actually saw any injuries to Mr. Owensby, rather that it was another officer who called his attention to the status of Mr. Owensby.
- Mr. Hardin added that Officer Spellens thought that the officers who had custody of Mr. Owensby would check on his condition and render first aid and that he was not under the impression that each individual officer on the scene had to go up and check on him.
- Mr. Hardin stated that at the time that Officer Spellens was on the scene, he did not feel the scene was stabilized and did not know or feel that Mr. Owensby was injured, but only possibly suffering from the effects of mace.
- Mr. Hardin pointed out that according to Sergeant Browner's IIS interview, when she first arrived on the scene, she went towards the Golf Manor car and shined her light in the car and did not notice any injuries. Mr. Hardin noted that this is roughly around the same time period the Officers Spellens and Brazile are shown on the MVR camera to move off to the left of the camera to look into the Golf Manor car. Mr. Hardin feels there is doubt as to the time sequence of when exactly Mr. Owensby was discovered injured.

The following is a summary of information presented as mitigation by Specialist Johnson in reference to Specification II:

- Specialist Johnson offered that Officer Spellens was very concerned when he arrived on the scene that night because he saw the blood on Officer Jorg's sleeve and was worried because this officer had been his Field Training Officer. Specialist Johnson felt this was a very stressful situation for Officer Spellens when he first arrived.

Conclusion Specification II:

Section 2.12 of the Cincinnati Police Departments Manual of Rules and Regulations is specific in its requirements that *Members are responsible for insuring the safety and welfare of persons and their personal property when transporting or having custody of persons who are sick, injured, arrested or incapacitated in any way.* The investigation supports the information that

Officer Spellen was aware of Mr. Owensby's injuries and did not ensure appropriate first aid was rendered as is required by Procedure 12.545. However, Officer Spellen's was not present at the start of Mr. Owensby's arrest, did not in any way participate in the initial struggle and custody of Mr. Owensby, and at no time took custody of Mr. Owensby. The officer was shown to have arrived at the scene after Mr. Owensby was already arrested and placed in the Golf Manner car. The investigation does not support the critical elements of transportation or custody of the prisoner at the time this occurred, as is required by section 2.12.

Finding Specification II:

Unfounded

Additional Information and Finding:

At the beginning of the hearing IIS stated that a Specification citing violation of section 1.01C, to wit, Procedure 12. 545 Use of Force, was mistakenly not included on Officer Spellen's charge sheet when he was served. While information presented by both IIS and OMI in reference to Specification II do not support a violation of section 2.12, that same information does support a violation of section 1.01C.

On November 7, 2000, Officer Spellen (P398) was aware Mr. Owensby was injured. Officer Spellen failed to tend to or seek medical aid for Mr. Owensby's injuries.

Officer Spellen's actions are in violation of section 1.01 (C) of the Manual of Rules and Regulations for the Cincinnati Police Division, which states:

1.01 Members shall not commit any acts or omit any act, which constitute a violation of any of the rules, regulations, procedures, directives, or orders of the Division.

C. Members shall not negligently fail to carry out any rule, regulation, procedure, directive, or order of the Division, which leads to physical injury to another or financial loss to the Division, to wit:

Procedure 12.545 Use of Force

Policy (in part);

Following any use of force resulting in the citizen's injury, officers will ensure appropriate first aid is rendered immediately once the incident scene is stabilized.

Finding

Based on the supporting information presented during the hearing, I recommend the Police Chief consider an additional Specification with a sustained finding for a violation of section 1.01C of the Manual of Rules and Regulations for the Cincinnati Police Division.

Additional Mitigation:

Lieutenant Edward Harris, Sergeant Edward Deters, and Sergeant Daniel Proffit appeared at the hearing as character witnesses for Officer Spellen. All of the above had supervised Officer Spellen at one point or another while at District Four.

- Sergeant Deters stated that when he was the Administrative Sergeant at District Four that he found Officer Spellen to be a very courteous, sensitive and willing to help other people and officers. Sergeant Deters added that he could not imagine Officer Spellen consciously misleading or persuading someone with the purpose to undermine justice or the Police Department. Sergeant Deters further added that he felt that Officer Spellen would be the first officer to help someone or go to their aid if he truly believed they were injured.
- Sergeant Proffit stated Officer Spellen has always been a dependable and reliable beat officer on his shift and that he has never had any occasion to doubt the officer's truthfulness.
- Lieutenant Edward Harris stated that Officer Spellen was, in his opinion, an upstanding officer who had many compliments from fellow officers and citizens. Lieutenant Harris added that he had never had any occasion to doubt the truthfulness of Officer Spellen.

Employee Disciplinary Profile:

None

Recommendation:

In accordance with provisions outlined in Rule 13.01 of the Police Department's Manual of Rules and Regulations and Disciplinary Process, in place at the time of the violation, I recommend Dismissal on the dishonesty charge.

all

JHS


City of Cincinnati



Interdepartment
Correspondence Sheet

February 25, 2003

To: Col. Thomas H. Streicher, Jr., Police Chief

From: Valerie A. Lemmie, City Manager 

Subject: Police Officer Victor Spellen

I am in receipt of the hearing officers pre-disciplinary hearing summary regarding Victor Spellen. Officer Spellen had a hearing on charges of Dishonesty and Neglect of Duty. The hearing officer sustained charges that Officer Spellen violated sections 5.01 and 2.12 of the Manual of Rules and Regulations and Disciplinary Procedures for the Cincinnati Police Department.

Based upon the facts and circumstances articulated in the report, as well as the provisions of the disciplinary matrix in place at the time, I am adopting this report and concurring with your recommendation, as well as that of the Human Resources Director and City Solicitor, of dismissal. Please expeditiously take any and all steps necessary to implement the recommended discipline.

Social Sec. No.: [] [] [] [] [] [] [] []

Name Victor C. Bonlet

Address 1114 42nd Street, New York

City, State, Zip Cincinnati, Ohio 45214

Job Title/Classification Chief Designer

Dept./Div. Department/Police

This is your Notice of: _____ Disciplinary Action
(Check One)

 Layoff

_____ Displacement to position of _____

Effective Date
of Disciplinary
Action, Layoff,
or Displacement

Complete For All Disciplinary Actions

Reason Codes

(Enter up to 3 codes)

1

2

3

1

2

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9	7
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--	--

3	7
---	---

--	--

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- 01—Failed Probation
- 02—Incompetency
- 03—Inefficiency
- 04—Dishonesty
- 05—Insubordination
- 06—Neglect of Duty
- 07—Failure of Good Behavior
- 08—Substance Abuse
- 09—Excessive Absenteeism
- 10—Violation of C.S. Rules/
C.S. Law/Code of Ethics
- 11—Other

01—Suspension
02—Loss of Vacation Time
03—Loss of Off-Day Time
04—Loss of Holiday Time
05—Demotion*
06—Reduction in Pay*
07—Dismissal*
09—Other

* Personnel Action Form
(Form 14) required

Hours Penalized
(Enter if applicable)

Complete For All
Layoffs and Displacements

Reason Codes
(Enter 1 Code)

41—Lack of Work*
42—Lack of Funds*
43—Job Abolishment*
49—Other

* Personnel Action Form
(Form 14) required

Specifications: Attach a sheet giving full details of the charges so that the employee may be placed fairly upon his/her defense. Include disciplinary action(s) assessed, including dates and nature of offense(s), except written reprimands older than three (3) years. If demotion/displacement in lieu of layoff, include new title. If Job Abolishment, include one of the following reasons: 1. Reasons of Economy 2. Lack of Work, or 3. Reorganization for the efficient operation of the employing unit.

(Appointing Authority)

This Notice Served Upon:

By Registered Mail/Certified Mail/ Personal. ~~Strike out those not applicable)~~

This _____ Day _____

19 At _____ O'Clock _____ M

(Signature of Individual Service This Notice)

1 White—Employee 2 Canary—Civil Service 3 Pink—Department 4 Goldenrod—Division

To The Employee:

You have 10 calendar days from the date this notice is filed with the Civil Service Commission in which to appeal this action to the Civil Service Commission. Dismissals, demotions, layoffs, displacements, reductions in pay, suspensions of more than 3 days (uniform police personnel may appeal suspension of any duration) and first half probationary failures are appealable.

(Appeals must contain the person's name, address and phone number and be sent or brought to Room 215, City Hall.)

Approved As
To Form By
Law Dept.:

Dept./Div.
Head
Initials:

Approved As To
Equity By
Personnel Dept.:

4/2

Form 32 Attachment
Pre-Disciplinary Hearing
November 19, 2002
Police Officer Victor Spellen
Charge: Dishonesty

SPECIFICATION I:

Members of the Homicide Unit interviewed Officer Spellen (P862) on two separate occasions. During the interviews Officer Spellen demonstrated a "neck hold" that Officer Jorg demonstrated to Sergeant Watts. When Officer Spellen was summoned to testify to what he observed at 2098 Seymour Avenue on November 7, 2000, he demonstrated a different hold. Officer Spellen admitted he intentionally altered this hold in court to favor Officer Jorg.

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Specification II

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C. Members shall not negligently fail to carry out any rule, regulation, procedure, directive, or order of the Division, which leads to physical injury to another or financial loss to the Division. To wit:

Procedure 12.545

Following any use of force resulting in a citizen's injury, officers will ensure appropriate first aid is rendered immediately once the incident scene is stabilized.

Employee Profile Information:

None

EVALUATION SUPPLEMENT LOG

EMPLOYEE NAME		P862 BADGE #		2002 YEAR					
DATE OF ENTRY	ACTIVITY SUMMARY INCLUDING DATE OF OCCURRENCE	SUPERVISORY ACTION TAKEN	DATE NOTIFIED	EMPLOYEE BADGE # & INITIAL	INITIATING SUPERVISOR BADGE # & INITIALS	REVIEWING SUPERVISOR BADGE # & INITIALS	FURTHER DISPOSITION		
2/5/02	On 2/5/02 you observed an entered vehicle on Burnett Ave. You coordinated uniform unit response which resulted in the apprehension of the driver and recovery of the auto without any incident.	Commended	2/5/02	V/S 8862	DLP S462				
3/13/02	participated in CHRC community meeting which resulted in positive community relations.	Commended		V/S 8862	JD / SI96				
3/16/02	On 03/16/02 Ms. Priscilla Hertzler entered D4 and personally wanted Officer Spellman Commended for his Caring, Professionalism, and Overall Effort for Police Services rendered.	Commended	03/16/02	X 8862 H/S	S462/DLP	S462/DLP			

EVALUATION SUPPLEMENT LOG

Snellen Victor	P862	2002
EMPLOYEE NAME	BADGE #	YEAR
	QUARTER	

	DATE OF ENTRY	ACTIVITY SUMMARY INCLUDING DATE OF OCCURRENCE	SUPERVISORY ACTION TAKEN	DATE NOTIFIED	EMPLOYEE BADGE # & INITIALS	INITIATING SUPERVISOR BADGE # & INITIALS	REVIEWING SUPERVISOR BADGE # & INITIALS	FURTHER DISPOSITION
1.	6/26/02	After discussion with the Police Chief, your salary step-up, which was to take effect on 7/8/02, is disapproved.	Advised	6/27/02	VS P862	KSJ/C3	KSJ/C3	
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								

SUPERVISOR'S SIGNATURE

DATE

EMPLOYEE'S SIGNATURE

DATE

Pre-Disciplinary Hearing

This hearing has convened at the IIS Office located at 801 West Eighth Street, Cincinnati, Ohio 45203, ¹³³⁷~~1335~~ hours on November 19, 2002, to inquire into incidents which occurred on November 7, 2000, and involves Police Officer Victor Spellen who is charged with violations of the Rules and Regulations or Procedures of the Cincinnati Police Department and/or the Rules of the Civil Service Commission.

This hearing will be conducted before Captain Andrew G. Raabe, Pre-Disciplinary Hearing Officer.

Sergeant Maris Herold, will be the hearing coordinator.

Sergeant Anthony Carter, will be the hearing recorder.

Officer Spellen is represented by Don Hardin, Attorney

OR

Officer _____ is not represented, but has been notified of his right to be represented.

Also present at this hearing:

Mr. John Plahvinsak, OMI Investigator

Scott Johnson - FOP Rep / Sentinal Rep

This hearing has concluded at 1554 hours.

HEARING AUTHORITY

TO BE READ AT DISCIPLINARY HEARINGS

This hearing is convened under authority of the City of Cincinnati Personnel Rule 5.2.

The prime objective of this hearing is to afford administrative justice. This is an administrative tribunal and is governed by principles of administrative law, which dictates that the primary objective of the hearing is the furtherance of the public interest, rather than the neutral arbitration of differences, which is the purpose of a court of law. Legal technicalities will not be permitted to defeat the achievement of this objective.

Any questions will be resolved by the Hearing Officer.

The Hearing Officer will be permitted to question any witnesses and to call or recall any witnesses as he may see fit. After all witnesses have been heard, exhibits examined and any mitigation offered, the hearing will be closed and the Hearing Officer will deliberate and come to a decision.

The Hearing Officer may make one of the following findings:

1. The complaint is invalid.
2. Evidence sustains the allegations.

If the decision of the Hearing Officer is that the evidence sustains the charge, the recommended penalty, exclusive to the Hearing Officer and pending final approval, will not be disclosed to the employee who is being disciplined until the completion of the review process and final approval of the City Manager.

I have read and understand this document.



Signature

11-19-02

Date